intention to remove the timber so cut within the period designated. Monroe, J., *dissenting*.

Subject to the limitations imposed on all transfers of real property, standing timber may be bought and sold by contract. 1 *Washburn on Real Property*, 3. And so some courts have held that if the number of trees sold is specific, the buyer gets title to all those trees, even though the contract of sale limits the time for removal of the timber, and only part has been removed within the time limit. *Hoit v. Stratton Mills*, 54 N. H. 109. But by the weight of authority, when there is a sale of timber with a definite time given for removal, the transaction is a conditional sale; and the buyer will own only that timber which he has removed before the time expires. *Kellam v. McKinstry*, 69 N. Y. 264; *Weber v. Proctor*, 89 Me. 404. The word "removed" as used in this connection has received a very liberal interpretation. Thus if timber has been hauled to other parts of the same premises, or has been cut up into railroad ties, it has been sufficiently "removed" to become the absolute property of the buyer. *Watson v. Gross*, 112 Mo. App. 615; *Johnson v. Truitt*, 122 Ga. 327. In fact the great majority of courts hold that it is enough if the timber is simply cut within the time limit. *Macomber v. Railroad*, 108 Mich. 491; *Hicks v. Smith*, 77 Wis. 146. *Contra*: *Kemble v. Dresser*, 42 Mass. 271.

NEGLIGENCE—DANGEROUS—APPLIANCES — STEAM BOILERS.—STATLER V. RAY MFG. CO., 109 N. Y. SUPP. 172. Where the defendant manufactured and sold a steam boiler for use in a public building and the boiler thereafter exploded by reason of the defendant's negligent construction, and the plaintiff was injured, *held*, that the plaintiff, though sustaining no contractual relation with the defendant manufacturer, was entitled to recover against it, though there was no claim of fraud or deceit in the sale of the boiler. McLennan, P. J., and Kruse, J., *dissenting*.

In general the manufacturer of goods is liable for their negligent construction to no one other than those to whom he sells the goods. *Curtin v. Somerset*, 140 Pa. St. 70. The rule is based on a want of privity of contract. *Marvin Safe Co. v. Ward*, 46 N. J. L. 19. But there are two exceptions to this rule. One is that when a maker of an article knows it to be defective and likely to cause injury, yet sells it fraudulently, he is liable in tort to any third party injured thereby. *Lewis v. Terry*, 111 Cal. 39. And, secondly, if the goods themselves are imminently dangerous, it is clear that their maker owes a public duty to use reasonable care in their production and sale. See *McCafferty v. Mossberg & G. Mfg. Co.*, 23 R. I. 381. In the application of this rule there is some conflict. The

following goods are held within the rule: Poisonous drugs (*Norton v. Sewall,* 106 Mass. 143); naphtha (*Standard Oil Co. v. Wakefield,* 102 Va. 824); but not petroleum (*Standard Oil Co. v. Murphy,* 119 Fed. 572). There is a direct conflict as to whether steam appliances for generating power are within this rule, the main case being opposed by *Losee v. Clute,* 51 N. Y. 494; and by one other, *Heizer v. K. & D. Mfg. Co.,* 110 Mo. 605.

NEGLIGENCE—RES IPSA LOQUITUR—INJURY TO PERSON NEAR RAILROAD TRACK.—EATON v. N. Y. CENT. & H. R. R. Co., 109 N. Y. SUPP. 419. Plaintiff while at a railroad depot on business was injured. He testified that he stood on the platform six or eight feet from a passing freight train and that something extending from a car struck him. The railroad company claimed that plaintiff was struck by a part of the engine, while attempting to cross the tracks and did not offer any explanation of any swinging object extending from train. *Held,* if plaintiff was injured as he stood on the platform by something projecting from the train, jury might apply the rule of *res ipsa loquitur.* McLennan, P. J., and Kruse, J., *dissenting.*

The general rule is that before the doctrine of *res ipsa loquitur* can be applied and the burden of proof thrown on the carrier, it must first be shown that the injury complained of resulted from the breaking of machinery, collision, derailment of cars, or something improper in the conduct of the carrier's business. *Thomas v. Philadelphia, etc., R. R. Co.,* 148 Pa. St. 180; *Hawkins v. Front St. Cable Ry. Co.,* 3 Wash. 592. Thus, where the accident causing the injury is connected with apparatus wholly under the control of the carrier (*Miller v. Ocean S. S. Co.,* 118 N. Y. 199), as the falling of a gangway (*Eagle Packet Co. v. Defries,* 94 Ill. 598), or the breaking of a paddle wheel (*Yerkes v. Keokuk N. L. Packet Co.,* 7 Mo. App. 265); it is well settled that there is a presumption of negligence on part of the carrier. On the other hand, it is equally well settled that the mere breaking of a passenger's leg (*Penn. R. Co. v. McKinney,* 124 Pa. 462), or a rock falling upon a passenger while the train is going through a cut (*Fleming v. Pittsburgh, etc., Ry. Co.,* 158 Pa. St. 130), raises no such presumption, and in such cases negligence must be proved by the plaintiff. *Baltimore & O. R. Co. v. State, Savington,* 71 Md. 599. Between these cases, there are those, like the principal case, on the border-line. Thus, it has been held, that the mere fact that cinders fell from defendant's locomotive and injured plaintiff's eye raised no presumption of negligence. *Searles v. Manhattan R. Co.,* 101 N. Y. 661. But *contra, Lowery v. Manhattan R. R. Co.,* 99 N. Y. 158.